(1) Supreme Court, U.S.
FILED

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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

DAVID KISSI, Petitioner

v.

UNITED STATES (SBA), Respondent

C. LAWRENCE WISER, Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE U.S. COURT OF APPEALS

FOR THE FOURTH CIRCUIT

DAVID KISSI, Pro Se
4305 AMMENDALE RD.
BELTSVILLE, MD 20705
301-937-2144

23.00

QUESTION PRESENTED

Whether Petitioner's due process was abridged when the Lower Court threw out his initial complaint without even a preliminary hearing after he had asked for one?

PARTIES TO THE PROCEEDING:

PETITIONER:

DAVID KISSI

JOINT RESPONDENTS:

U.S. GOVERNMENT (SBA)

C. LAWRENCE WISER,
Money Store's Agent

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SIGNED BY JUDGE WILLIAM M. NICKERSON

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GRANTING SUMMARY JUDGEMENT TO THE
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AMENDMENT 14 TO THE U.S. CONSTITUTION

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NO. _____

IN THE

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TO U.S. FOURTH CIRCUIT COURT OF APPEALS

Petitioner, submits this Writ of Certiorari to have reviewed the Fourth Circuit's denial of his petition for a hearing at the Lower Court.

OPINIONS BELOW

Appendix A is a Memorandum of Opinion of the U.S. District Court granting the Respondents' request for a summary judgment and Appendix B is an order affirming the same. Appendix C is the 4th Circuit throwing out the Petitioner's Brief pleading for a hearing and Appendix D affirmed that rejection.

JURISDICTION

The next stop for a review is at this High Court and its jurisdiction is affirmed by 28 USC 2403(a) because this review concerns the Petitioner's due process protected by the 14th Amendment - see Appendix E.

Petitioner also believes that this Court's review is warranted since the Lower Courts' ruling in this case

contradicts Maryland Rule 2-311(f), which says that one cannot be denied a hearing before the disposition of a case if one has asked for one.

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED HERE

Amendment 14 to the U.S. Constitution is set forth in Appendix E.

STATEMENT OF THE CASE

In the 90s, the U.S. Small Business Administration (SBA) guaranteed Petitioner's Money Store mortgage that C. Lawrence Wiser, the Lender's Agent, later restructured with an inducement that if Petitioner were to pay down the principal by $22,000 in 2/99, the Lender will reduce Petitioner's monthly payment to $2,500 from $3,808. The SBA, in its role as our loan guarantor was part of this inducement. But after Petitioner satisfied this Abeyance Agreement, both Wiser and the SBA reneged and even refused to grant the Petitioner a hearing in contradiction to U.S. Code § 2347(b).

Now, despite overwhelming evidence

of prejudicial errors of the U.S. District Court in Baltimore, the 4th Appeals Circuit refused to review - see Appendix C. Also, note for the record that the U.S. District Court on its own initiative consolidated the complaints against Wiser (case # 99-2320) with that of the SBA (case # 99-2319). And, finally, since there wasn't any hearing, there isn't any transcript in the Record.

ARGUMENT

In its request for Summary Judgment, the Respondents failed to present sufficient evidence that could have been admitted into evidence during trial. For example, they made allegations that border on hearsay and that wouldn't be admissible under Federal Rule 706, Article VIII (1). Unfortunately, the Lower Court overlooked these and inadvertently abridged the Petitioner's due process.

Also, note Judge William M. Nickerson of the U.S. District Court committed judicial error when he didn't take into consideration in granting the

Summary Judgment Petitioner's reliance on Federal Rule 56(f) which is applicable in this case because the Petitioner's charge of negligent misrepresentation against the SBA and C. Lawrence Wiser, could only have been proved through a formal trial. And per Discovery and Deposition and witnesses the Petitioner could have secured the Respondents' own internal records to back his claim for remedy during trial.

In sum, the Lower Court abridged Petitioner's due process under the Fourteenth Amendment when it denied him at least a preliminary hearing. In addition, the Lower Court's ruling contradicts Maryland Rule 2-311(f) that says that a case cannot be disposed of without a hearing, especially in this case where Petitioner had specifically asked for one. Here Petitioner invokes precedents where courts granted hearings when parties asked to be heard, i.e.: Karl v. Blue Cross, 100 MD App 743, 1994; Briscoe v. Mayor of Baltimore, 100 MD App 124, 1994, 640 A2d 226; Moore v. Boyd, 62 So 2d 427; Pan American World

Airways, Inc. v. Gregory, 96 So 2d 699; White v. Spears, 123 So 2d 689; Harbour Tower Development Corp. v. Seaboard Equipment Co., 179 So 2d 405.

CONCLUSION

Thus, in light of Briscoe, a certification to have this case reviewed for a hearing on its merits at the U.S. District Court is in order.

Dated September 6, 2000.
Respectfully Submitted by

D. K

David Kissi, Pro Se

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DAVID KISSI	:	
	:	
v.	:	Civil Action No.
	:	WMN-99-1228
U.S. SMALL BUSINESS ADMINISTRATION	:	
	:	
* * * * * * * * * * * *	* * * * * * * * * * * *	
DAVID KISSI	:	
	:	
v.	:	Civil Action No.
	:	WMN-99-1811
C. LAWRENCE WISER	:	

MEMORANDUM

Both of the above captioned cases arise out of a loan transaction entered into by DK&R Company, Inc., as the borrower, and The Money Store, as the lender. Plaintiff David Kissi is the President of DK&R Company. The U.S. Small Business Administration ["SBA"] was the loan guarantor.

Civil Action No. 99-1228 was filed against the SBA. The essence of the complaint is that the SBA refused to restructure the terms of DK&R's loan or to require or force The Money Store to restructure it. Plaintiff states that his claim is one of "negligent

misrepresentation pursuant to Federal statute 37 C.J.S. Section 59." [footnote: C.J.S. (Corpus Juris Secundum) is, of course, a legal reference and not a source of law in and of itself]. Complaint at ¶ 4. The SBA has moved to dismiss the complaint on several grounds, including the failure to state a claim and Plaintiff's failure to exhaust administrative remedies. The motion will be granted.

As Plaintiff has denominated his claim as one of negligence, it lies, if at all, in tort. Thus, the claim is subject to the requirements of the Federal Tort Claims Act. 28 U.S.C. §§ 2671 et seq. It is undisputed that Plaintiff has failed to file an administrative tort claim pursuant to the Act. Thus, at least to the extent that Plaintiff seeks monetary damages, his claim is barred. See 28 U.S.C.§ 2675 (a).

Plaintiff's claim also fails on its merits. According to the SBA regulations and the loan documents themselves, it is The Money Store, as the Preferred Lender, that is

responsible for the servicing, restructuring, or liquidation of its loans. The SBA had neither the duty, nor the authority, to restructure DK&R's loan. Thus, there can be no liability for failing to do what it has no duty to do.

Civil Action N. WMN-99-1811 was brought against C. Lawrence Wiser, counsel for The Money Store. On June 29, 1999, the Court dismissed that action for lack of subject matter jurisdiction. Plaintiff has filed a motion asking the Court to reconsider that decision. Plaintiff appears to argue that the Court could exercise supplemental jurisdiction over the claims against Wiser if it consolidated the action against Wiser with the action against the SBA. As the Court is dismissing the case against the SBA, the Court will deny Plaintiff's Motion to Reconsider filed in Civil Action No. WMN-99-1811.

A separate order consistent with this memorandum will issue.

/s//William M. Nickerson
United States District Judge

Dated: September 13, 1999.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DAVID KISSI	:	
	:	
v.	:	Civil Action No.
	:	WMN-99-1228
	:	
U.S. SMALL BUSINESS ADMINISTRATION	:	

* * * \

GRANTED;

3. That Civil Action No. WMN-99-1228 is hereby CLOSED;

4. That any and all prior rulings made by this Court disposing of any claims against any parties are incorporated by reference herein and this order shall be deemed to be a final judgment within the meaning of Fed. R. Civ. P. 58;

5. That the Clerk of the Court shall mail copies of the foregoing Memorandum and this Order to all Counsel of record.

/s/William M. Nickerson
United States District Judge

APPENDIX C

UNITED STATED COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 99-2319

DAVID ADOFO KISSI,
Plaintiff - Appellant,

versus

US SMALL BUSINESS
ADMINISTRATION
Defendant - Appellee.

NO. 99-2320

DAVID ADOFO KISSI,
Plaintiff - Appellant,

versus

C. LAWRENCE WISER
Defendant - Appellee.

Appeals from the United States District Court for the District of Maryland, at Baltimore. William M. Nickerson, District Judge. (CA-99-1228-WMN, CA-99-1811-WMN)

Submitted: January 20, 2000

Decided: January 28, 2000

Before WILLIAMS, MICHAEL, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

David Adofo Kissi, Appellant Pro Se. Lynne Ann Battaglia, United States Attorney, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

David Kissi appeals the district court's orders granting the U.S. Small Business Administration's motion to dismiss and denying Kissi's motion to reconsider dismissal of his civil action against C. Lawrence Wiser. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court and deny Kissi's motion to appoint counsel. See Kissi v. U.S. Small Bus. Admin., Nos. CA-99-1228-WMN; CA-99-1811-WMN (D. Md. Sept. 14, 1999). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and

argument would not aid the decisional process.

AFFIRMED

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
April 10, 2000

No. 99-2319
CA-99-1228-WMN

DAVID ADOFO-KISSI
Plaintiff - Appelllant

v.

U.S. SMALL BUSINESS ADMINISTRATION
Defendant - Appellee

No. 99-2320
CA-99-1811-WMN

DAVID ADOFO-KISSI
Plaintiff - Appellant

v.

C. LAWRENCE WISER
Defendant - Appellee

On Petition for Rehearing and Rehearing En Banc

The appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the

opinion that it should be denied.

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court,

/s/PATRICIA S. CONNOR
CLERK

APPENDIX E

AMENDMENT 14 TO THE U.S. CONSTITUTION

AMENDMENT XIV

(Ratified July 9, 1868)

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.